

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MITCHELL GRIFFIN,)
) No. 437, 2004
Defendant Below,)
Appellant,) Court Below: Superior Court
) of the State of Delaware in and
v.) for New Castle County
)
STATE OF DELAWARE,) Cr. ID No. 0401020858
)
Plaintiff Below,)
Appellee.)

Submitted: February 2, 2005

Decided: February 22, 2005

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

ORDER

This 22nd day of February 2005, on consideration of the parties' briefs, it appears to the Court that:

1. Mitchell Griffin appeals his rape conviction in the Superior Court, claiming the trial judge erred by denying his motion for a mistrial. Griffin contends that the chief investigating officer's presence at the prosecutor's table during jury selection prejudiced him in front of the jury. Because the record reflects that the officer did not participate in the selection process and that she only remained in the courtroom for ten minutes, we find that the trial judge acted within his discretion by denying Griffin's request for a mistrial. Accordingly, we affirm.

2. In February 2004, New Castle County police charged Griffin, then thirty-eight years old, with three counts of third-degree rape for engaging in sexual intercourse with a fifteen year old girl.¹ After jury selection began, the State's chief investigating officer entered the courtroom and sat at the prosecution table for approximately ten minutes. When the trial judge noticed the officer's presence, he questioned the prosecutor, who explained that the officer had not assisted him in the selection process. In addition, the officer stated that she had not spoken to the prosecutor except to explain why she arrived late. The trial judge removed the officer from the courtroom, but denied Griffin's motion for a mistrial. Following trial, the jury convicted Griffin of one count of third-degree rape.² Griffin appeals, contending the trial judge erred by denying his request for a mistrial.

3. We review the denial of a motion for a mistrial for abuse of discretion.³ We will overturn a trial judge's exercise of broad discretion in conducting jury selection only on a showing of prejudice to the defendant.⁴

4. In *Shields v. State*, we criticized the practice of permitting police witnesses to assist in jury selection, stating that the practice "tends to ingratiate the

¹ 11 Del. C. § 771(a)(1).

² *State v. Griffin*, Del. Super., I.D. No. 0401020858 (Sept. 22, 2004).

³ *Ashley v. State*, 798 A.2d 1019, 1022 (Del. 2002).

⁴ *Hickman v. State*, 431 A.2d 1249, 1251 (Del. 1981), citing *Hooks v. State*, 416 A.2d 189, 194 (Del. 1980).

police witnesses in the eyes of the jury; and such apparent association with the ‘convening’ of the Trial Court tends to enhance unfairly the credibility of the police witnesses.”⁵ Griffin contends that the officer’s presence at the prosecutor’s table violated the rule established in *Shields*.

5. This case is distinct from *Shields*, however, because the officer did not participate in the jury selection process, and was only present at counsel’s table for ten minutes before the trial judge removed her. On these facts, the officer’s presence did not violate the *Shields* mandate because the officer did not assist the prosecution in jury selection.⁶ The trial judge found that the officer’s brief presence did not prejudice Griffin’s case, and on appeal Griffin offers no evidence to the contrary. Accordingly, we find that the trial judge acted well within his discretion by denying Griffin’s motion for a mistrial.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁵ 374 A.2d 816, 820-21 (Del. 1977).

⁶ *See id.*